

# **Street Trading and Pedlary Laws – compliance with the European Services Directive**

**Department for Business Innovation and Skills  
consultation**

**Response of  
The Trading Standards Institute**

**March 2013**

### **About The Trading Standards Institute**

The Trading Standards Institute is the UK national professional body for the trading standards community working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our broad church of Members are represented at the highest level of government, both nationally and internationally.

We campaign on behalf of the profession to obtain a better deal for both consumers and businesses.

We are also a forward-looking social enterprise delivering services and solutions to public, private and third sector organisations in the UK and in wider Europe.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

In compiling this response, TSI has canvassed the views of its Members and Advisers. The response has been spearheaded and composed by Lisa Foster. If you require clarification on any of the points raised in the response, please do not hesitate to contact Lisa at email [lisa.foster@lincolnshire.gov.uk](mailto:lisa.foster@lincolnshire.gov.uk).

TSI does not regard this response to be confidential and is happy for it to be published.

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## **Street Trading and Pedlary Laws – compliance with the European Services Directive**

### **Trading Standards Institute response – March 2013**

TSI acknowledges the need to review the current legislation in relation to pedlars and street trading to bring the UK into compliance with the European Services Directive.

However, there are concerns that repealing the Pedlars Acts 1871 and 1881 (UK wide) will have a detrimental impact on both 'genuine' pedlars (ie. those who currently trade as pedlars and are authorised accordingly) and consumers, the majority of whom do not wish to be cold called on their doorstep, in particular, elderly and vulnerable consumers.

For many years, trading standards services across the UK have been committed to tackling doorstep crime and the rising number of cold callers. This has involved: educating consumers on good doorstep behaviour such as not dealing with cold callers and using a door chain if fitted; sharing intelligence on doorstep callers with partnership organisations such as the police; advising traders who generate business going door to door; and taking enforcement action when deemed necessary.

Most trading standards officers and police officers dealing with doorstep crime incidents would wish to see at the very least continued regulation, if not enhanced or tightened controls, with a complete ban on cold calling altogether.

Officers from both organisations witness firsthand the devastating, and sometimes fatal, consequences that those who cold call on elderly and vulnerable consumers can have. A police officer from Lincolnshire describes the work in the fight against doorstep crime as 'homicide prevention'.

It is accepted that as the Act stands it applies to a relatively small number of door to door sales people and from a trading standards perspective, officers do not rely on the legislation to stop doorstep callers.

However, as the work carried out in relation to doorstep crime is generally carried out in partnership with local police forces, views of police officers have been sought to inform this response.

Police officers from the East Midlands region have commented that the certification regime is a useful way for them to check who is calling from house to house, with the certificate only being granted to those without previous convictions. This is imperative, as pedlars are visiting people's homes. The current system may deter some from applying due to their having previous convictions for offences such as distraction burglary or straightforward burglary or theft.

If pedlars with no fixed address are not required to register, this could provide an opportunity for the sale of stolen, faulty or unsafe goods without any form of redress. How does a consumer get redress if they cannot contact the pedlar?

By asking for the certificate, police officers can 'move on' those who may be looking for an opportunity to engage in distraction burglary or who are using their sales pitch to see whether anyone is home before breaking in or to assess the vulnerability of the householder. Pedlars are known to be transported the length and breadth of the country in minibuses to seemingly sell a few dusters. This begs the question: why? The Pedlars Act currently gives the Police a reason to stop check them.

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To illustrate the above, the following details are provided by Derbyshire Police:

January 2013 - 2 duster sellers in Chesterfield. Officers spoke to the men. One said he had a pedlar's certificate issued by Nottinghamshire Police and was working as a duster seller as part of the 'Start Work Programme'.

Subsequently, he was found not to have a pedlar's certificate. He had applied in 2009 but been refused due to his previous convictions. At the time of his arrest he was living in Nottinghamshire but was on bail for a dwelling burglary in Bristol, where the offender had entered via a rear window and stolen jewellery and electrical items.

The second male had no pedlar's certificate. He too lived in Nottinghamshire, and already had a conviction for peddling without a certificate in Gloucestershire. He had previous convictions for theft and burglary.

Clearly this shows the transient nature of duster sellers. They are willing to travel the length and breadth of the country to sell and are very often not known to the force area they are visiting. When challenged they often become aggressive and abusive. They show police officers homemade cards which they try to pass off as official certificates.

Another example given by Derbyshire Police relates to a distraction burglary:

In March 2012, an elderly female was visited by a male who was selling dusters etc. He sold the victim £147 worth of goods. During the sale he identified where the victim kept money hidden. He went on to ask for a drink. Whilst the victim was distracted making the drink he stole cash which was around £600. When the victim returned the offender made his excuses and left, taking the goods he had sold the victim with him. Unfortunately for him his fingerprints were found on the door bell. He was arrested and charged with the offence. He was known to be a duster seller who travelled to sell his wares.

A covert camera was installed as a result of this offence. Within a very short period of time the victim was revisited by a different male. He was luckily disturbed by a neighbour just as he was about to enter the victim's address and try to sell her goods from a large bag he had over his shoulder.

This is all caught on camera. He clearly stands at her door and tells her she knows him as he has visited before. The lady does not recall this, but she has been visited by a duster seller previously who stolen from her. He says he doesn't want to come in then asks for a drink and as the victim turns to walk away he makes a positive and clear effort to enter her home. Just as he does this the neighbour appears and the male steps back on the door step.

The male goes on to have a conversation with the victim and neighbour during which he says he has a shoulder injury received as a soldier in Afghanistan and hence he is forced to sell.

If pedlars are allowed to go un-checked, this problem will get worse.

A national standardised pedlar's certificate would be easy for police officers to recognise and check for authenticity. Consumers would also know what to look for rather than the confusion that is generated currently by rogue cold callers showing a mocked-up card.

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#### Change to the Definition of Pedlar

The consultation document states that the main complaint from local authorities is that existing legislation is not clear on what a pedlar is, which makes enforcement very difficult. The document claims that with a tighter definition of pedlary, many of the problematic issues will be resolved as clear contraventions of legislation can be dealt with.

The proposed definition states:

- pedlars will have to trade on foot and will be required to sell their goods either on the high street or house to house
- pedlars will have to carry all their goods on them or on a receptacle with combined dimensions that do not exceed 2 metres high, 1 metre wide, or 1 metre long
- pedlars cannot remain static for longer than 10 minutes - they should then move on at 'reasonable speed' to a location not less than 50 metres away and remain there again for no more than 10 minutes
- a pedlar cannot return to a location they have previously occupied within 3 hours of leaving that location
- if a pedlar is approached by a potential customer, they may remain static beyond the 10 minute duration until all transactions are complete

Requiring pedlars to trade door to door undermines the creation of No Cold-Calling Zones and the work undertaken by trading standards services and other organisations to deter businesses from canvassing door to door.

Surveys carried out by trading standards services where No Cold Calling Zones have been implemented show that those living within them feel less vulnerable and their fear of crime is reduced. Where No Cold Calling Zones are in place, pedlars ignoring stickers and similar signage asking them not to call could find themselves being reported to trading standards or the police. Similarly, 'genuine' pedlars who respect such zones and signage may find it difficult to achieve sales, as those living within the zones generally feel more empowered and able to deal with cold callers.

The proposed time restraints are too long, especially if someone is at the doorstep. A pedlar spending 10 minutes on a resident's doorstep trying to pressure them into buying something is not acceptable. Householders who are elderly or vulnerable may feel threatened or intimidated in situations like this, and feel pressurised into parting with their cash just to get rid of the person. This can lead to the householder being targeted again in the future.

The requirement for a pedlar to move on to a location not less than 50 metres away is very unlikely to be adhered to. Pedlars are required to trade on foot and sell their goods by means of visits from house to house. There are not many areas where houses are over 50 metres apart, which will mean the pedlar will have to miss several houses out and go back and forth to comply. This could result in households being visited twice if the pedlar is unsure as to where he has previously been.

Simply, how can any of this to be enforced?

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### Summary

TSI believes that pedlary is an out-dated form of retail in the 21st century. Back in the days of *circa* 1871, due to the scarcity of merchants and outlets for the sale of everyday items and service providers for mending pots, pans, kettles (tinker), general metal work and mending of chairs, pedlary of these goods and services was perhaps required. However, with modern-day availability of public transport and cars, it is an outdated notion to believe that pedlars provide a valuable service for the public good.

Although there may have been a case for the necessity of such peddling services in 1871, the government of the day sought to regulate it at that time because of the degree of harm being inflicted by rogues engaging in these trades, even way back then.

Despite the abundant evidence of such peddling (or cold calling, as we now know it) in the modern day being virtually exclusive to rogues, with considerable detriment arising, especially to the elderly and vulnerable, the current government is stating, via its response

to the consultation, that it wants to see the minimum of restriction placed on those who engage in the activity.

The government has cited 'sufficient consumer protection measures being already in place', but there is ample evidence to demonstrate both from trading standards and police, that today the majority of those who seek business via peddling ie. unsolicited visits by traders to people in their homes, do so solely or overwhelmingly for the express purpose of fraud and exploitation of vulnerable people.

TSI accepts that the rogue traders whom trading standards are currently tackling are a) unlikely to fall into the category of pedlars and b) likely to pay little or no regard to the need for a certificate should they be affected. However, if the current measures serve to help police officers across the UK, then the legislation, or similar measures, should still be considered useful and relevant. If the certification system is revoked, there will be an increase in complaints from householders regarding suspicious callers with no identification. Many rogue traders may use the lack of licensing/regulation and the guise of legitimate trading as an opportunity to commit crime against older and vulnerable people in their own homes.

A recent police report highlights a benefit of the Act with consumers faced with salespersons at the door being advised to ask to see their pedlar's certificate ([http://www.essex.police.uk/news\\_features/features\\_archive/2011/march/warning\\_over\\_nottingham\\_knock.aspx](http://www.essex.police.uk/news_features/features_archive/2011/march/warning_over_nottingham_knock.aspx))

Issuing a pedlar's certificate will at least ensure that the person is fit and proper to carry out such an occupation, bearing in mind they are visiting 'customers', very often the elderly and vulnerable, at their own home

There is plenty of scope provided by the EU Services Directive (Directive 2006/123/EC) for justifying continued or enhanced regulation, on the basis of 'Overriding reasons relating to the public interest' (para 40) and 'Public Policy' (para 41) and TSI believes that the solid evidence given in this response gives scope to do just that.

If the decision is made to repeal the Pedlars Acts, TSI would like to see written into the new legislation (or in an accompanying code of practice) a requirement for doorstep traders to respect the wishes of consumers who do not want to receive cold calls.

Wording such as 'Pedlars must not engage in cold calling trading activities where a household has clearly indicated by any means that they do not wish to be contacted in that way' would cover homes that display individual door stickers or homes within clearly designated and readily identifiable No Cold Calling Zones.

This approach can be seen within other Approved Codes that TSI administers and is already contained within the Green Deal Code of Practice (a government initiative to reduce energy consumption in households) and Trustmark.

TSI would welcome the opportunity to discuss this further.

TSI would finally wish to register its support for the view expressed by the Local Government Association which has stated: 'Residents tell us that they are fed up with having a stream of cold callers knocking at their door who intrude on their home life. These callers need to be managed under one consistent framework that can be locally applied. The work local authorities do to regulate street trading protects vulnerable people from rogue traders and rip-off merchants, but also ensures other businesses can prosper too' (LGA press release, 15<sup>th</sup> January 2013).

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TSI would like to thank colleagues from trading standards for their contributions, in particular those in:

Derbyshire County Council  
Lincolnshire County Council  
Leicester City  
Leicestershire County Council  
Nottinghamshire County Council  
Surrey County Council

In addition:

Derbyshire Police  
Leicestershire Police  
Nottinghamshire Police

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